Supreme Court, U. S.
FILED
OCT 13 1976
MICHAEL RODAK, JR., CLERK

No. 76-74

In the Supreme Court of the United States

OCTOBER TERM, 1976

RONALD V. FALES, PETITIONER

v.

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-74

RONALD V. FALES, PETITIONER

v.

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner challenges a final decision of the Secretary of Health, Education, and Welfare, upheld by the district court and court of appeals, denying him disability insurance benefits.

The administrative law judge, after a full hearing, found that petitioner suffered from "obesity, psychoneurosis, hypogonadism, hemophelia, tobacco brochitis, etc." (Pet. App. 15) and noted that petitioner complained of pain in his legs and back, as well as severe headaches (Pet. App. 14). However, the administrative law judge concluded: "A careful examination by competent physicians of both the mental and physical aspects of the complainant's allegations reveal without conflict that the claimant is capable of working" (Pet. App. 14-15).

The petitioner's varied work background,[1] the administrative law judge observed, "gives every reason to conclude especially in view of the absence of objective medical findings of severe impairments that the claimant can work at many of his former occupations" (Pet. App. 15). He found petitioner not to be "under a disability," as that term is defined in Section 223(d) of the Social Security Act, as amended, 42 U.S.C. 423(d) (Pet. App. 16).

Petitioner sought review of this decision in the United States District Court for the Eastern District of Michigan pursuant to Section 205(g) of the Act. The district court, while recognizing petitioner's subjective allegations of pain and discomfort, also noted (Pet. App. 20) "persuasive evidence that a reduction in weight would substantially ease the claimant's problems." The court then concluded that, viewing the evidence in its entirety, there was substantial evidence to support the Secretary's denial of disability. The court of appeals affirmed, holding that there was substantial evidence to support the decision of the Secretary (Pet. App. 21).

Contrary to petitioner's contentions, the opinion of the court of appeals announces no new law. Nor does its judgment conflict with any other decision.[2]

---

[1]There was evidence at the hearing that petitioner had worked as a drill press operator, riveter, steeplejack, truck driver, demolition expert, coal mine worker, pipefitter, electrician's helper, copper mine worker, oil field worker, baker's helper, and painter (Pet. App. 14).

[2]In particular, there is no conflict with *Lackey* v. *Celebrezze*, 349 F. 2d 76 (C.A. 4). The court of appeals in *Lackey* found, on the particular facts of that case, that the Secretary's decision to deny disability benefits was not supported by substantial evidence largely because the administrative law judge had disregarded the combined effects of the claimant's numerous severe physical ailments, including both emphysema and possible heart disease.

Petitioner contends (Pet. 2) that the court of appeals has announced a new requirement that "a physician must state that the [claimant] is unable to engage in any substantial gainful activity prior to [claimant] being eligible for disability benefits under the Act." The contention is without merit. While the court of appeals noted in this case that "no physician stated that the applicant is unable to engage in any substantial gainful activity" (Pet. App. 21), the court did not in fact announce a rule requiring physicians expressly to make such statements. To obtain disability insurance benefits, an applicant must furnish "medical and other evidence," 42 U.S.C. 423(d)(5), showing that he cannot engage in his previous work or "in any other kind of substantial gainful work which exists in the national economy," 42 U.S.C. 423(d)(2)(A). In this case, the administrative law judge found (Pet. App. 14-15) that petitioner's medical evidence established discomfort but not disability. The district court and the court of appeals merely recognized that substantial evidence supported that finding.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1976.

DOJ-1976-10